IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1323 of 1997
In
SPECIAL CIVIL APPLICATION No. 4121 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE M.C.PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAGDISHCHANDRA MAGANLAL TRIVEDI - Appellant(s)

Versus

STATE BANK OF INDIA - Respondent(s)

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Appearance :
MR YN OZA with MR SUNIL K SHAH for Appellant(s) : 1,
MR PRANAV G DESAI for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE B.J.SHETHNA
and
HONOURABLE MR.JUSTICE M.C.PATEL

Date : 16/11/2005

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE B.J.SHETHNA)

This appeal is placed before this court in a very unusual circumstance. Initially, it was fully heard by

the Hon'ble First Court consisting of Hon'ble Chief Justice Bhawani Singh and H.K. Rathod, J. After hearing the learned counsel for the parties, the judgment was reserved and C.A.V. judgment was pronounced on 15th April, 2004 and the appeal of the appellant, who was aged 75 years and suffering from the last stage of Cancer, was allowed and the respondent – Bank was directed to implement the order of the court and to give necessary benefits available to the appellant as a consequence of the said order within two months from the date of receipt of xerox copy of the order. It was also reported in 2004 (2) G.L.H. Page 514.

1.1 It was an old appeal of 1997 which was heard by the Hon'ble First Court in 2004 after a period of 7 years. When the matter was heard, the learned counsel for the appellant was not knowing that the sole appellant – Jagdishchandra Maganlal Trivedi breathed his last due to Cancer at the age of 75 years. When it had come to his notice, an application was filed by his legal heirs to implead them as the legal heirs of the original appellant – Jagdishchandra Maganlal Trivedi. The said application was allowed by their Lordships and while permitting them to be impleaded as the legal heirs of the deceased

original appellant, the same Bench passed the following order on 23rd December, 2004 in Miscellaneous Civil Applications No.662/2004, 1703/2004, 1704/2004, 1705/2004 and 1088/2004 filed in this present appeal:

> "... ... Judgment of this court in Letters Patent Appeal No.1323 of 1997 dated 15.4.2004 is recalled. Consequently, Letters Patent Appeal No.1323 of 1997 is ordered to be decided afresh in accordance with law on merits without being influenced by the judgment dated 15.4.2004."

Accordingly, it is placed before this court today for final disposal.

2. In view of the observations made by their Lordships in their order dated 23rd December, 2004 passed in Miscellaneous Civil Application No.662/2004 and other applications, learned counsel Shri Pranav Desai for the respondent - Bank submitted that this appeal be heard afresh by this court and it may be decided strictly in accordance with law.

3. However, learned senior counsel Shri Yatin Oza appearing with Shri Sunil K. Shah placed reliance on a judgment of this court in the case of **BAI DHULI Wd/o NARSIBHAI CHHOTALAL AND OTHERS vs. BAI ICHHA w/o SOMABHAI CHHOTABHAI reported in 1983 G.L.H. Page 290**. It was a case in which late Justice A.N. Surti, sitting as a Single Judge of this court, had decided the matter but before his Lordship signed the order, his Lordship unfortunately expired. Therefore, the said matter was placed before another learned Single Judge of this court [Coram: S.B. Majmudar, J. (as he then was)] and it was held by the learned Single Judge that once the order was passed by the learned Single Judge, who unfortunately died before signing it, then the same order has to be simply signed by another Judge before whom the matter is placed, without fresh hearing. Here, it is a reverse case where the appeal of the deceased appellant was allowed by the Division Bench but the said order had to be recalled because it was passed in favour of a dead person.

4. It is true that the Hon'ble First Court, while allowing Miscellaneous Civil Application No.662/2004 and allied applications, has stated in its judgment and order

dated 23rd December, 2004 that this appeal be decided afresh in accordance with law on merits without being influenced by its judgment dated 15th April, 2004 delivered in this appeal. But in our considered opinion, this appeal can be disposed of on the same lines.

5. This is a case in which an unfortunate original appellant was no more in the world to know the result of his appeal which remained pending for 7 years. If he had not died before the judgment was delivered, then the respondent – Bank could not have made such submission. When the legal heirs of the original appellant – deceased Jagdishchandra Maganlal Trivedi came to know about the judgment delivered in favour of the deceased appellant, then they brought it to the notice of the learned counsel. Till then, they were not even knowing that the appeal filed by the deceased was pending before the court. Therefore, there was a delay in filing Miscellaneous Civil Application for recalling the order and impleading them as legal representatives of the deceased appellant as the judgment was a nullity as it was passed in favour of a dead person. As stated earlier, the said applications were allowed by the same court which had earlier allowed the appeal of the

original appellant and recalled its own order. While recalling the order, the Hon'ble Court has shown the grace by observing that the appeal be decided in accordance with law on merits without being influenced by the judgment dated 15th April, 2004. Unfortunately, the learned counsel for the respondent – Bank submitted that the appeal be heard afresh by this court. In our opinion, it would be nothing but a sheer waste of the valuable time of this court. At the cost of repetition, we may say that once a co-ordinate Bench decided the matter, then no other view could be taken by another Bench. Judicial propriety demands that we should adopt the said judgment as a whole.

5.1 Accordingly, this appeal is allowed in terms of the judgment and order dated 15th April, 2004 except the last paragraph of the judgment as the original appellant has died. Accordingly, we direct the respondent – Bank to implement this order and make payment of necessary benefits available to the present appellants, which were to be paid to the original deceased appellant if he was alive as early as possible and, in any case, not later than January 31, 2006. The office is directed to give copy of this order to both the learned counsel for the

appellants Shri Shah and Shri Pranav Desai for the respondent – Bank forthwith for its immediate implementation.

(B.J. Shethna, J.)

(M.C. Patel, J.)

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